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[additional counsel appears on signature page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANDREW FINE, TAMMY FEDERMAN
SEP/IRA, and THE ROSENFELD FAMILY
FOUNDATION, Derivatively on behalf of
APPLE INC.,

Plaintiffs,

v.

TIMOTHY D. COOK, LUCA MAESTRI,
CRAIG FEDERIGHI, ARTHUR D.
LEVINSON, ALBERT GORE, JR., ANDREA
JUNG, JAMES A BELL, RONALD D.
SUGAR, ROBERT A. IGER, and SUSAN L.
WAGNER,

Defendants,

-and-

APPLE INC., a California Corporation,

Nominal Defendant.

Case No. 19-cv-05863-YGR

**JOINT STATEMENT AND
STIPULATION AND ~~PROPOSED~~
ORDER STAYING ACTION**

Pursuant to the Court's October 11, 2019 order (ECF No. 25), Plaintiffs Andrew Fine, Tammy Federman SEP/IRA, and The Rosenfeld Family Foundation (collectively "Plaintiffs") and nominal defendant Apple Inc. ("Apple" or the "Company"), hereby submit the following joint statement and stipulation:

WHEREAS, on September 20, 2019, Plaintiffs filed a stockholder derivative complaint ("Complaint") purportedly on behalf of Apple alleging breach of fiduciary duties, waste of corporate assets, unjust enrichment, and violations of law against certain of the Company's officers and directors (collectively with Apple, "Defendants") (Plaintiff and Defendants are collectively referred to herein as the "Parties");

WHEREAS, undersigned counsel for Apple has agreed to accept service for Defendants and waive service of the summons;

WHEREAS, a consolidated consumer class action captioned *In re Apple Inc. Device Performance Litigation*, No. 5:18-md-02827-EJD (N.D. Cal.) is currently pending in this Court (the "Consumer Action"), and is factually related to this action;

WHEREAS, the parties to the Consumer Action recently informed the Court that they attended a productive mediation, and have a follow up mediation set for September 28, 2019 (*see* Consumer Action ECF No. 387);

WHEREAS, a consolidated securities fraud class action captioned *In re Apple Inc. Securities Litigation*, No. 4:19-cv-02033-YGR (N.D. Cal.) is currently pending in this Court (the "Securities Action"), and is factually related to this action;

WHEREAS, the Court-appointed lead plaintiff in the Securities Action is scheduled to file an amended complaint on October 15, 2019, with briefing on the defendants' anticipated motion to dismiss concluding in February 2020 and a hearing to be held on March 3, 2020;

WHEREAS, two other related shareholder derivative action purportedly filed on behalf of Apple captioned *Zehrer v. Cook, et al*, No. 19-cv-05153-YGR, and *Bankhalter v. Cook, et al.*, No. 19-cv-05881-YGR, are currently pending before this Court and arise out of the same facts and circumstances as this action (the "Related Derivative Actions");

WHEREAS, the Court has entered orders temporarily staying the Related Derivative

1 Actions for six (6) months;

2 WHEREAS, the Parties to this action believe that events may unfold in the Consumer
3 Action and Securities Action over the next six (6) months that may promote the just and efficient
4 case management of this action: therefore, the Parties agree to temporarily stay all proceedings in
5 this action for a period of six months;

6 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the parties,
7 through their respective counsel of record and subject to Court approval, as follows:

8 1. This action, including all deadlines and hearings, is hereby temporarily stayed until
9 March 11, 2020.

10 2. Any Party may lift the stay by providing thirty (30) days' written notice to the other
11 Parties.

12 3. Within thirty (30) days of the expiration or lifting of the stay pursuant to paragraphs
13 1 or 2 hereof, the Parties shall meet and confer and submit to the Court a proposed case management
14 schedule.

15 4. Plaintiffs may file amended complaints during the pendency of the stay, and the
16 filing of any such amended complaint shall not affect the pendency of the stay or trigger any
17 obligation by Defendants to respond while the stay is pending.

18 5. The composition of Apple's Board of Directors that will be considered in connection
19 with determining whether Plaintiffs' complaint, amended or otherwise, has adequately pled that a
20 pre-litigation demand on the Company's Board of Directors would have been futile shall be the
21 composition of the Board of Directors as of September 20, 2019, the date this action was initiated.

22 6. This stay shall not preclude Plaintiffs from pursuing, during the course of the stay,
23 any rights he may have to inspect the Company's books and records pursuant to California
24 Corporations Code section 1601 ("Section 1601"), nor shall it impact Apple's rights or defenses in
25 response to any demand pursuant to Section 1601.

26 7. By entering into this stipulation, the Parties do not waive any rights or defenses not
27 specifically addressed herein.

28 **IT IS SO STIPULATED.**

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2 Dated: October 11, 2019

ORRICK, HERRINGTON & SUTCLIFFE LLP

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4 Alexander K. Talarides
ALEXANDER K. TALARIDES

5 Attorneys for Defendants

6
7 Dated: October 11, 2019

WEISSLAW LLP

8
9 David Katz
DAVID KATZ

10 Attorneys for Plaintiffs

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13 **CIVIL L.R. 5-1 ATTESTATION**

14 Pursuant to Civil L.R. 5-1(i)(3), I, Alexander K. Talarides, am the ECF user whose ID and
15 password are being used to file this Joint Stipulation and [Proposed] Order. In compliance with
16 General Order 45, X.B., I hereby attest that David Katz has concurred in this filing.

17
18 Alexander K. Talarides
ALEXANDER K. TALARIDES

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22 **PURSUANT TO THE STIPULATION, IT IS SO ORDERED**

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25 DATED: October 17, 2019

26 
HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE